UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

UPS GROUND FREIGHT, INC.[1]

Employer

and Case No. 11-RD-701

WILLIAM M. PEACOCK, and Individual

Petitioner

and

TEAMSTERS NATIONAL UPS FREIGHT
NEGOTIATING COMMITTEE

Union

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, UPS Ground Freight, Inc., is a Virginia corporation with its principal office and place of business in Richmond, Virginia, where it is engaged in the transfer of freight as a less-than-truckload carrier. The Union, Teamsters National UPS Freight Negotiating Committee, currently represents a voluntarily-recognized bargaining unit comprised of hourly employees employed by the Employer as drivers, either over-the-road or city, as well as hourly employees engaged in dock work, checking, stacking, loading, unloading, handling, shipping, receiving, switching, fork lift, rigging, stuffing, stripping, loading and discharging of cargo or containers, at the Employer's facilities located in four locations in South Carolina: Gaffney, Greenville, West Columbia and North Augusta. The Petitioner, William M. Peacock, filed this petition under Section 9(c) of the National Labor Relations Act seeking to decertify the Union as

[1] The name of the Employer appears as amended by the joint stipulation.

the collective bargaining representative for employees at the Employer's North Augusta facility. Thereafter, the parties entered into a joint stipulation in lieu of a Board-conducted hearing and the Union filed a brief with the undersigned.[2]

As evidenced by the joint stipulation and the Union's brief, there are two issues: (1) whether the Petitioner can petition to decertify the single North Augusta facility as opposed to the recognized four-facility unit; and (2) whether there is a contract bar to the petition. The Petitioner contends that the North Augusta facility alone constitutes an appropriate unit for the decertification petition. To the contrary, the Employer and Union contend that the recognized unit, which consists of four facilities, is the appropriate unit for the petition. The Union further argues that the collective-bargaining agreement, executed shortly after recognition, bars the petition.

I have considered the evidence and the arguments presented by the parties on both issues. As discussed below, I have concluded that the appropriate unit for the petition is the recognized unit, consisting of all four facilities, and that, under the principles set forth in Dana Corp., 351 NLRB No. 28 (2007), there is no contract bar to the petition. Accordingly, I shall direct an election in the recognized unit described below, which is a unit larger than that sought by the Petitioner. As the unit found appropriate herein is larger than that sought by the Petitioner, I shall allow the Petitioner 14 days in which to submit the necessary additional showing of interest.[3] To provide a context for my discussion of the issues, I will provide a brief description of the relevant facts, including a discussion of the Employer's operations, the Employer's voluntary recognition of the Union and the collective bargaining history between the parties. I

[2] The parties' joint stipulation dated June 4, 2008, was later supplemented on June 18, 2008.
[3] In the joint stipulation, the Petitioner expressed a willingness to proceed to an election if the unit found appropriate were larger than the one the Petitioner sought through its petition.

will then provide my analysis, including a detailed discussion of the relevant legal authority and its application to the facts presented herein.

I. STATEMENT OF FACTS

(A) The Employer's Operations

The Employer operates several facilities in South Carolina, including the four facilities at issue here located in Gaffney, Greenville, West Columbia and North Augusta. Each facility has its own Terminal Manager who directly reports to the Regional Director of Operations (RDO). The RDO, in turn, reports to the Regional Vice-President. The four facilities described above are not organized under the same geographic region. In this regard, the Gaffney, Greenville and West Columbia facilities fall within the Employer's Mid-Atlantic region, while the North Augusta facility falls within the Employer's Southeast region.

(B) Voluntary Recognition

On a date known to the parties, the Employer and Union entered into an agreement whereby the Employer agreed to recognize the Union, upon a showing of majority status, as the exclusive bargaining representative of employees in an agreed-upon bargaining unit, the scope of which covers all four facilities. Thereafter, on March 31, 2008, Arbitrator James F. Searce determined that, based on his review of submitted authorization cards, a majority of the employees in the agreed-upon unit desired representation by the Union. That same day, the Employer voluntarily recognized the Union as the exclusive bargaining representative for the designated employees at the four facilities.

(c) Bargaining History

Prior to voluntary recognition, the parties did not enjoy a bargaining relationship at the four facilities. However, subsequent to the March 31 recognition, employees in the recognized

unit ratified the national collective-bargaining agreement, which covers not only the four facilities in the recognized unit, but also 132 terminals and nearly 10,000 employees throughout the United States. The national agreement, ratified by the recognized unit on April 7, expires July 31, 2013. Since the April 7 ratification, the parties have been operating in accordance with the terms of the national agreement.

II. ANALYSIS

As stated above, the Petitioner contends that the single North Augusta facility is the appropriate unit for the purposes of the present decertification petition; to the contrary, the Union and Employer contend that the recognized unit consisting of four facilities, is the appropriate unit. The Union further argues that the current collective-bargaining agreement bars the instant petition. Before I examine the issues presented, I will first discuss recent changes in the law regarding the viability of decertification petitions filed after an employer's voluntary recognition of a union.

Historically, the Board has held that an employer's voluntary recognition of a union, based on a showing of majority status, barred a decertification petition or a rival union petition for a reasonable period of time. Keller Plastics Eastern Inc., 157 NLRB 583 (1966). However, the Board in Dana recently announced a new policy regarding decertification or rival union petitions filed subsequent to an employer's voluntary recognition of a union.[4] Dana Corp., 351 NLRB No. 28 (2007). In this regard, the Board modified the Keller Plastics recognition-bar doctrine and stated that, prospectively, voluntary recognition will not bar a decertification or rival union petition that is filed within 45 days of the "notice of recognition." Dana, 351 NLRB No. 28, slip op. at 1. The notice of recognition is an official agency notice issued by the

[4] I note that the Union asserts that the Board's decision in Dana is incorrect; however, I am bound by current Board law.

Regional Office upon receipt of written notification that the employer has voluntarily recognized the union. Id. at 10. The notice, which must be posted in conspicuous places throughout the workplace, provides: (1) the date of recognition; (2) a description of employees' Section 7 rights to be represented by a union of their choice or no union at all; (3) an employee's right to file a decertification petition, supported by thirty percent or more of the unit, within 45 days of the posting of the Board notice; (4) an employee's right to support a rival union's petition, supported by at least 30 percent of the unit, filed within 45 days of the posting; and (5) assurances that a timely and properly supported petition will be processed in accordance with the Board's normal rules and procedures. Id. In addition, the notice provides that if no petition is filed within the 45-day window period, the "recognized union's majority status will be irrebuttably presumed for a reasonable period of time to enable the parties to engage in negotiations for a first collective-bargaining agreement." Id. at 8.

In accordance with the Dana decision, following the March 31 voluntary recognition, the Union immediately requested that the Region issue Dana notices for posting at the four facilities in the recognized unit. Thereafter, the Region forwarded the notices to the Employer and the Employer posted the notices on April 10. On May 23, Petitioner timely filed the present decertification petition.

(A) The recognized unit, which encompasses four facilities, is the appropriate unit for the decertification petition.

Petitioner asserts that the appropriate unit for the petition is the North Augusta facility, while the Employer and Union assert that the appropriate unit is the recognized four-facility unit. I find that, for the purposes of the instant decertification petition, the recognized unit is the appropriate unit.

The Board has long held that the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit; in other words, a petitioner cannot decertify part of a unit. Campbell Soup Co., 111 NLRB 234 (1955). Specifically, in Campbell Soup, the Board held that "mindful of the fact that Congress has made no provision for the decertification of part of a certified or recognized bargaining unit and in the absence of any statutory requirement or overriding policy considerations to the contrary, we find that the existing bargaining unit is the unit appropriate for the purposes of collective bargaining." Id. at 235. This principle applies even when there is reason to believe that the carved-out unit which the petition seeks to decertify may have been found to be an appropriate separate unit at an initial certification proceeding. See W.T. Grant Co., 179 NLRB 670 (1969) (Board held that although there were factors that, if presented at an initial certification proceeding, would establish the propriety of a separate unit for service employees, the evidence established that the employees were merged into one overall unit and a petition seeking to decertify only a segment of the existing unit should be dismissed).

Nothing in the Dana decision evidences an intent by the Board to depart from long-established precedent requiring that a petition to decertify a unit be coextensive with the recognized unit. To the contrary, the Board in Dana specifically stated that a petition to decertify a voluntarily recognized union must be "supported by 30 percent or more of the unit employees." Dana, 351 NLRB No. 28 slip op. at 1. Here, while the recognized unit covers four facilities, the Petitioner only seeks to decertify the Union as the exclusive bargaining representative of employees at a single facility. I find that, for the purposes of the instant decertification petition, the appropriate unit is the recognized four-facility unit.

(B) There is no contract bar to the decertification petition.

The Union contends that the decertification petition is barred by the national collective-bargaining agreement ratified by the unit on April 7. Based on the Board's recent decision in Dana, I find there is no contract-bar to the instant decertification petition.

In Dana, not only did the Board modify the recognition-bar doctrine, but it also made "parallel modifications" to the contract-bar rules. Dana, 351 NLRB No. 28, slip op. at 2. In this regard, the Board held that "a collective-bargaining agreement executed on or after the date of voluntary recognition will not bar a decertification or rival union petition unless notice of recognition has been given and 45 days have passed without a valid petition being filed." Id. Here, the collective-bargaining agreement was executed during the Dana prescribed 45-day window period. I, therefore, conclude that the collective-bargaining agreement does not bar the petition.

IV. CONCLUSION AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purpose of the Act to assert jurisdiction in the case.
3. The Union involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> Hourly employees employed as drivers, either over-the-road or city; as well as hourly employees engaged in dock work, checking, stacking, loading, unloading, handling, shipping, receiving, switching, fork lift, rigging, stuffing, stripping, loading and discharging of cargo or containers, employed by UPS Freight Inc. at its facilities located in Gaffney, Greenville, West Columbia and North Augusta, South Carolina; but excluding all office clericals, mechanics, and guards and supervisors as defined by the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Teamsters National UPS Freight Negotiating Committee. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharge for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, NC 27116-1467 on or before **July 1, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 336-631-5210. Since

the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need to be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five full working days prior to 12:01a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services,* 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St. N.W. Washington, DC 20570 and received by the Board in Washington by **July 8, 2008**. The request may not be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file on of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website,

select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-file your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated at Winston-Salem, North Carolina, on the 24th day of June 2008.

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